

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RICKY A. HOTZ,

Petitioner,

v.

WARDEN MATHY,

Respondent.

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Case No.: 08-cv-00850-DRH-DGW

ORDER

This action comes before the Court upon review of the docket. Petitioner Ricky A. Hotz, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 on November 28, 2008 (Doc. 1). At the time he filed his petition, Hotz named Warden Mathy as Respondent. Hotz is currently incarcerated at the Pontiac Correctional Center, where he is in the custody of Warden Guy Pierce (Doc. 23). Warden Pierce filed an answer to Hotz's petition for writ of habeas corpus on May 27, 2010. *Id.*

A petition for a writ of habeas corpus must include the "name of the person who has custody" over the petitioner. 28 U.S.C. §2242. Any writ issued by a court is to be directed "to the person having custody over the person detained." 28 U.S.C. §2243. In *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), the Supreme Court reaffirmed its holding regarding the proper respondent in a habeas corpus action. The Court emphasized that for over 100 years the Supreme Court has interpreted the statute to mean that the proper respondent in a habeas corpus action is the person who has "immediate custody" over the petitioner "with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." *Id.* at 435 (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). Applying this rule, the proper respondent over Hotz is Guy Pierce, the warden at the Pontiac Correctional Center.

Accordingly, Guy Pierce, is **SUBSTITUTED** as the Respondent in this action. The caption on all future filings should read: *Ricky A. Hotz v. Guy Pierce*.

DATED: December 10, 2010

s/ *Donald G. Wilkerson*
DONALD G. WILKERSON
United States Magistrate Judge